



BILLING CODE 6717-01-P
DEPARTMENT OF ENERGY
Federal Energy Regulatory Commission

[Project No. 6618-007]

Christopher M. Anthony; Notice of Revocation of Exemption Under
Section 31(B) of the Federal Power Act and Soliciting Comments and Interventions

Take notice that the following hydroelectric proceeding has been initiated by the Commission:

- a. Type of Proceeding: Revocation of exemption under section 31(b) of the Federal Power Act (FPA)
- b. Project No.: 6618-007
- c. Date Initiated: February 7, 2014
- d. Exemptee: Christopher M. Anthony
- e. Name and Location of Project: The Frankfort Project is located at the head of tide on Marsh Stream, near the Town of Frankfort, in Waldo County, Maine.
- f. Filed Pursuant to: 16 U.S.C. 823b(b) (2012)
- g. Exemptee Contact Information: Christopher Anthony, Express Hydro Services, 312 Somerset Avenue, Pittsfield, Maine 04967
- h. FERC Contact: B. Peter Yarrington, (202) 502-6129 or peter.yarrington@ferc.gov
- i. Deadline for filing comments, protests, and motions to intervene is **30 days** from the issuance of this notice. All reply comments filed in response to comments submitted by any resource agency, Indian tribe, or person, must be filed with the Commission within **45 days** from the issuance date of this notice.

Please file your submittal electronically via the Internet (eFiling) in lieu of paper. Please refer to the instructions on the Commission's Web site under <http://www.ferc.gov/docs-filing/efiling.asp> and filing instructions in the Commission's Regulations at 18 CFR section 385.2001(a)(1)(iii). To assist you with eFilings you

should refer to the submission guidelines document at <http://www.ferc.gov/help/submission-guide/user-guide.pdf>. In addition, certain filing requirements have statutory or regulatory formatting and other instructions. You should refer to a list of these “qualified documents” at <http://www.ferc.gov/docs-filing/efiling/filing.pdf>. You must include your name and contact information at the end of your comments. Please include the project number (P-6618-007) on any documents or motions filed. The Commission strongly encourages electronic filings; otherwise, you should submit an original and seven copies of any submittal to the following address: The Secretary, Federal Energy Regulatory Commission, Mail Code: DHAC, PJ-12, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. Description of Project Facilities: The project consists of a 14-foot-high, 250-foot-long stone masonry dam, a powerhouse containing one generator unit rated at 400 kilowatts with a hydraulic capacity of 440 cubic feet per second, a Denil-style fishway, and appurtenant facilities.

k. Opportunity for an Evidentiary Hearing: Under section 31(b) of the FPA, 16 USC 823b(b) (2012), within **30 days** of the issuance date of this notice, the exemptee may request an evidentiary hearing on this matter before a Commission administrative law judge.

l. Violations of Exemption: The exemptee failed to comply with the requirements of Commission staff's Compliance Order issued on January 30, 2013 (142 FERC ¶ 62,042), which notified the exemptee that it was in violation of the project exemption and required the exemptee to file a report illustrating that it could correct its noncompliance with its exemption. Specifically, the exemptee is in violation of standard article 2 of its exemption, which requires the exemptee to comply with terms and conditions set by the U.S. Fish and Wildlife Service (FWS) and the State of Maine for designing, constructing, and operating fish passage facilities at the project. The exemptee has failed to comply with its exemption and the January 30, 2013 Compliance Order within a reasonable period of time (over one year).

The exemptee's noncompliance with its exemption and with the Compliance Order is likely to affect Atlantic salmon, a species listed as endangered under the Endangered Species Act.

m. Material Facts on Which the Violations Are Based: On September 20, 1982, the Commission granted an exemption from the licensing requirements of Part I of the FPA for the Frankfort Project. Through standard article 2 of the exemption, FWS and the Maine state fish and wildlife agencies required the exemptee to design and construct upstream and downstream fish passage facilities after receiving design approval from FWS and the Maine agencies. In 1986, the exemptee constructed the fish passage facilities without obtaining full approval of the design from FWS or the Maine fish and wildlife agencies.

On April 19, 2012, the FWS informed the Commission that the exemptee was in violation of its exemption because the project's fish passage facilities prevented upstream and downstream passage of fish, including endangered Atlantic salmon. On May 15, 2012, and September 7, 2012, Commission staff requested the exemptee file a plan and schedule to address the problems with upstream and downstream passage of fish. On October 31, 2012, the exemptee filed a plan; however, FWS and the National Marine Fisheries Service (NMFS)¹ found the plan to be inadequate and requested that the exemptee consult with both agencies.

On December 13, 2012, Commission staff issued an order modifying and approving the exemptee's plan and schedule. Specifically, the order required the exemptee, in accordance with its plan and schedule to: modify the entrance to the fish ladder and install a tide gate that ensures that the entrance can be accessed by fish by the spring of 2013; construct and install powerhouse intake trashracks or removable trashrack overlays by the summer of 2013; consult with FWS and NMFS on the design and installation work; and file final drawings that have been approved by FWS and NMFS with the Commission. The order also required the exemptee to file monthly progress reports, by the 15th of each month, including: (1) A detailed description of progress in designing and completing the measures identified FWS and NMFS; (2) summaries of consultation with the FWS, NMFS, and other resource agencies regarding the completion of the measures; (3) identification of any problems that may interfere with the scheduled completion of the measures; (4) descriptions of any interim measures that will be taken to pass fish and protect Atlantic salmon; (5) summaries of descriptions of any observations of, or interactions with, Atlantic salmon at the project, and copies of correspondence with NMFS and Commission staff regarding those observations; and (6) copies of any communications with NMFS regarding the need for consultation under section 7 of the Endangered Species Act. The first progress report was due January 15, 2013. The exemptee did not file its first monthly progress report or consult with FWS and NMFS as required by the December 13, 2012 order.

¹ While NMFS did not place mandatory terms and conditions on the exemption, it is currently the lead federal agency in protecting federally listed Atlantic salmon using the rivers of Maine.

On January 30, 2013, Commission staff issued a Compliance Order, finding that the exemptee was in violation of its exemption and ordering the exemptee to file a report by February 14, 2013, addressing: the monthly reporting requirements contained in the December 13, 2012 order, evidence that the exemptee consulted with FWS and NMFS, and evidence that the exemptee can complete the measures required by the December 13, 2012 order, within the timeframes specified by that order. Specifically, that it could complete modifications to the fish ladder by the spring of 2013 and construction of the intake trashracks by the summer of 2013. The Compliance Order warned the exemptee that failure to comply could result in the imposition of civil penalties or revocation of the exemption pursuant to section 31 of the FPA.

On February 20, March 22, and April 22, 2013, the exemptee filed late monthly progress on reports that generally addressed the December 13, 2012 order's requirements, but did not address the requirements of the Compliance Order. The reports indicated that the exemptee was designing a tide gate to allow upstream fish passage.

On May 14, 2013, Commission staff, including staff from the Commission's Office of Enforcement, held a teleconference with the exemptee to review the importance of complying with the Commission's requirements, and providing protection for endangered Atlantic salmon. Staff agreed to extend the deadline for the exemptee's next progress report until May 30, 2013. The exemptee did not file its May 2013 report.

On June 11, 2013, FWS stated that it had met with the exemptee and NMFS to review and provide guidance regarding the exemptee's fishway design, but the exemptee did not incorporate the agencies' guidance.

On June 26, 2013, Commission staff issued a letter reviewing the exemptee's noncompliance with the project exemption and Commission staff's orders and stating that failure to comply could result in the imposition of civil penalties or revocation of the project's exemption. The exemptee did not file any further monthly progress reports with the Commission.

On August 13, 2013, the Commission issued a Notice of Termination of Exemption by Implied Surrender based on the exemptee's failure to comply with the December 13, 2012 order and Compliance Order. Comments in favor of termination were filed by NMFS; the U.S. Department of the Interior on behalf of the FWS; the Maine Department of Marine Resources; and Clinton B. Townsend on behalf of the Penobscot Indian Nation, Atlantic Salmon Federation, Maine Rivers, Natural Resources Council of Maine, and the Maine Council of Trout Unlimited.

On September 16, 2013, the exemptee filed a report indicating that it would,

within 10 days, install its tide gate on the fishway entrance, and file a follow up report on the installation. The report did not address the August 13, 2013 termination notice. On September 17, 2013, Commission staff asked the exemptee to include in its next filing photographs showing that the tide gate had been installed and was operating. On October 7, 2013, the exemptee filed a report indicating that it had installed the tide gate and was adjusting it, and was planning to begin other fish passage work, but failed to include photographs of the tide gate. On October 18, 2013, the exemptee indicated that it was continuing to work with its tide gate, and expressed disagreement with the agencies regarding fish passage designs. On October 31, November 1, and November 7, 2013, NMFS and FWS personnel inspected the exemptee's tide gate, and determined that its design was unsatisfactory because of problems with size, elevation, and durability.

The exemptee has knowingly violated the terms of its exemption and, despite being given a reasonable time to comply with its exemption and the January 30, 2013 Compliance Order, has failed to do so.

n. This notice is available for review and reproduction at the Commission in the Public Reference Room, Room 2A, 888 First Street, NE, Washington, DC 20426. The filing may also be viewed on the Commission's website at <http://www.ferc.gov/docs-filing/elibrary.asp>. Enter the Docket number (P-6618-007) excluding the last three digits in the docket number field to access the notice. You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call toll-free 1-866-208-3676 or e-mail FERCOnlineSupport@ferc.gov. For TTY, call (202) 502-8659.

o. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

p. Comments, Protests, and Motions to Intervene -- Anyone may submit comments, protests, or motions to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents -- Any filing must (1) bear in all capital letters the title "PROTEST", "MOTION TO INTERVENE", "COMMENTS", or "REPLY COMMENTS"; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments,

recommendations, or terms and conditions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

r. Previous Comments –The Commission will consider, as filed in this proceeding, all comments filed in response to the August 13, 2013 Notice of Termination by Implied Surrender.

Dated: February 7, 2014.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

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